

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

IN RE: ETHICON, INC.  
PELVIC REPAIR SYSTEMS  
PRODUCTS LIABILITY LITIGATION

MDL NO. 2327

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THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 332  
ORDER SCHEDULING OBJECTIONS PURSUANT TO FEE AND COST PROTOCOL**

This court previously entered its Pretrial Order establishing the Fee Committee Protocol for the review and evaluation of time and expense for consideration by the Common Benefit Fee and Cost Committee (the “Protocol”).<sup>1</sup> Pursuant to the terms of the Protocol, on October 13, 2017, the court entered its Order Granting Motion to Appoint the Honorable Daniel J. Stack, Retired, as External Review Specialist to work with the Common Benefit Fee and Cost Committee (“FCC”) in accomplishing the court’s directives under the Protocol.<sup>2</sup> The Protocol ordered the External Review Specialist to prepare and deliver his Recommended Allocation to the court. The Protocol further provides that “[u]pon receipt of the...external review specialist’s...recommended allocation, the court will determine the process for consideration of any objections to the...external review specialist’s recommended allocation.”

The court having entered its Pretrial Order Re: Petition for an Award of Common Benefit

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<sup>1</sup> Bard MDL 2187 PTO 257, AMS MDL 2325 PTO 244, BSC MDL 2326 PTO 166, Ethicon MDL 2327 PTO 262, Cook MDL 2440 PTO 81, Coloplast MDL 2387 PTO 133, Neomedic MDL 2511 PTO 38.

<sup>2</sup> Bard MDL 2187 Doc. No. 4663, AMS MDL 2325 Doc. No. 5112, BSC MDL 2326 Doc. No. 4422, Ethicon MDL 2327 Doc. No. 4783, Cook MDL 2440 Doc. No. 592, Coloplast MDL 2387 Doc. No. 1572, Neomedic MDL 2511 Doc. No. 177.

Attorneys' Fees and Expenses on January 30, 2019, received (1) the Final Written Recommendation of the FCC, (2) the Recommended Allocation of the External Review Specialist, and (3) supporting materials, and has been notified that each participating plaintiff's firm has received these materials on March 12, 2019. The court **ORDERS** that the (1) FCC's Final Written Recommendation, (2) the Recommended Allocation of the External Review Specialist, and (3) supporting materials attached as an exhibit to this Order, be filed as one document by the Clerk. The court further **ORDERS** as follows:

1. All objections of Participating Counsel to the Recommended Allocation of the External Review Specialist must be filed on or before **March 26, 2019**;
2. Any response by the FCC must be filed on or before **April 9, 2019**; and
3. In light of the numerous complicated questions of law regarding privilege, privacy, and other matters, and in an effort to avoid encumbering the court's docket with the voluminous record comprised of tens of thousands of pages of documents, the FCC is to deliver the following materials to the court for its inspection and consideration, *in camera*:
  - a. Attorney biographies provided by Participating Counsel;
  - b. The original time submission made by each Participating Counsel to the Court appointed CPA;
  - c. The self-audited time submission made by each Participating Counsel to the Court appointed CPA;
  - d. The affidavit provided by each Participating Counsel accompanying its self-audited time;

- e. The letter to each Participating Counsel reflecting the FCC's initial review of time submissions including Exhibits identifying time found not compensable by the FCC at that time;
- f. The materials provided by Participating Counsels in response to the FCC's initial review including affidavits provided by Participating Counsels;
- g. The expense submissions provided by each Participating Counsel, where applicable;
- h. The letter to each Participating Counsel reflecting FCC's revised time and expense review after the FCC's consideration of the materials received from Participating Counsel including the Exhibits detailing individual line items of time and expense not accepted by the FCC at that time;
- i. The transcripts of the in-person meetings conducted among the FCC, the External Review Specialist and those firms seeking an in-person opportunity to be heard by the FCC;
- j. The FCC's Preliminary Written Recommendation delivered to each firm, the two Exhibits attached thereto, and any objections made thereto; and
- k. The FCC's Final Written Recommendation including all exhibits, and any objections made thereto.

The court **DIRECTS** the Clerk to file a copy of this Order in 2:12-md-2327. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through CM/ECF system or the court's website at [www.wvsc.uscourts.gov](http://www.wvsc.uscourts.gov).

ENTER: March 12, 2019



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE